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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT

(Butte)

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THE PEOPLE,

Plaintiff and Respondent,

v.

DUANE KEVIN WEAVER,

Defendant and Appellant.

C087919

(Super. Ct. No. 17CF02449)

Appointed counsel for defendant Duane Kevin Weaver filed an opening brief setting forth the facts of the case and asks this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Finding no arguable error on appeal that would result in a disposition more favorable to defendant, we affirm the judgment.

## BACKGROUND

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

Defendant began sexually abusing the victim when she was in third grade and continued abusing her until she was 16, when she reported the abuse to her mother. During that time, defendant brushed up against the victim in confined spaces. He repeatedly rubbed the victim's vagina over her clothing, put his fingers inside the victim's vagina, and on at least one occasion he rubbed his penis on the victim's foot while he put his fingers in her vagina.

Following an investigation, which included a pretext telephone call between defendant and the victim, the People charged defendant with several offenses related to the sexual abuse of a child. Defendant pleaded no contest to committing lewd and lascivious acts upon a child under the age of 14 (Pen. Code, § 288, subd. (a)),<sup>1</sup> and being over 21 years old and sexually penetrating a child under the age of 16 with a foreign object (§ 289, subd. (i)). In exchange for defendant's plea, the People moved to dismiss the remaining charges with a waiver pursuant to *People v. Harvey* (1979) 25 Cal.3d 754. The court granted the People's motion. The court also appointed Dr. Stembridge to conduct a psychological evaluation of defendant prior to sentencing.

Following that evaluation, the trial court sentenced defendant to an aggregate term of eight years eight months in state prison. The court awarded defendant 485 days of presentence custody credit. Among other fines and fees, the trial court ordered defendant to pay a restitution fine of \$300 (§ 1202.4) and imposed but suspended a matching parole revocation fine (§ 1202.45). The court also imposed a \$40 court operations assessment (§ 1465.8) and a \$30 conviction assessment (Gov. Code, § 70373) on each count, and

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

ordered defendant to pay direct victim restitution. The trial court found defendant had no ability to pay the cost of the presentence report, and no ability to pay the public defender fee. Defendant appeals without a certificate of probable cause.

## DISCUSSION

Appointed counsel filed an opening brief that sets forth the facts of the case and asks us to determine whether there are any arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d 436.) Counsel advised defendant of the right to file a supplemental brief within 30 days of the filing of the opening brief. More than 30 days have elapsed, and we have received no communication from defendant.

We have undertaken an examination of the entire record and find no arguable error that would result in a disposition more favorable to defendant.

## DISPOSITION

The judgment is affirmed.

/s/  
BLEASE, Acting P. J.

We concur:

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BUTZ, J.

/s/  
MURRAY, J.